No. 87-1111

Supreme Court, U.S.
FILED
JAN 20 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

RICHARD and DARLENE MATTNER, d/b/a MATTNER FARMS,

Petitioners,

v.

JESUS BUENO, *et al.*,

Respondents.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.
Attorneys for Respondents
By: GARY N. GERSHON
49 Monroe Center, N.W., 3-A
Grand Rapids, MI 49503-2933
(616) 454-5055

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

COUNTERSTATEMENT OF QUESTION PRESENTED

MUST DEFENDANTS BE AWARE OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSAWPA) TO BE LIABLE FOR DAMAGES FOR VIOLATION OF THE ACT?

TABLE OF CONTENTS

	Page
COUNTERSTATEMENT OF QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
REASONS WHY THE WRIT SHOULD BE DENIED	3
Summary of Argument	3
Considerations For Granting Certiorari Under Rule 17.1 Have Not Been Presented	4
MSAWPA—History And Purpose, Particularly Regarding Private Enforcement As A Means To Remedy Abuses And Broad Construction Thereof	4
There Is No Conflict Among The Circuits With Regard To The Only Issue Before The Court Nor Are There Conflicts With Decisions Of This Court And Petitioners' Argument Is Without Merit	6
CONCLUSION	11

TABLE OF AUTHORITIES

Page

CASES

Abrams v. United States, 250 U.S. 616 (1919) 9

Almendarez v. Barrett-Fisher Co., 762 F.2d 1275 (5th Cir. 1985) 5

Alvarez v. Joan of Arc, Inc., 658 F.2d 1217 (7th Cir. 1981) 6, 9

Alvarez v. Longboy, 697 F.2d 1333 (9th Cir. 1981) 6

Aranda v. Pena, 413 F. Supp. 849 (S.D. Fla. 1976) 7

Beliz v. W.H. McLeod & Sons Packing Co., 765 F.2d 1317 (5th Cir. 1985) 2, 5

Bueno v. Mattner, 633 F. Supp. 1446 (W.D. Mich. 1986) 1

Bueno v. Mattner, 829 F.2d 1380 (6th Cir. 1987) 1, 2, 8, 10

Castillo v. Givens, 704 F.2d 181 (5th Cir. 1983), *cert. denied* 464 U.S. 850 (1984) 3, 6, 9

Cramer v. United States, 325 U.S. 1 (1944) 9

De La Fuente v. Stokely-Van Camp, 713 F.2d 225 (7th Cir. 1983) 6, 8

De Leon v. Ramirez, 465 F. Supp. 698 (S.D.N.Y. 1979) 7, 9

Ellis v. United States, 206 U.S. 246 (1907) 8

Marshall v. Coastal Growers Ass'n, 598 F.2d 521 (9th Cir. 1979) 5

Mountain Brook Orchards v. Marshall, 640 F.2d 454 (3d Cir. 1981) 5

NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963) 9

Personnel Administrator of Mass. v. Feeney, 442 U.S. 256 (1979) 9

TABLE OF AUTHORITIES—Continued

Page

Radio Officers Union v. Labor Board, 347 U.S. 17 (1953) 9

Reynolds v. United States, 98 U.S. 145 (1879) 8

Rivera v. Adams Packing Ass'n Inc., 707 F.2d 1278 (11th Cir. 1983) 7

Salazar-Calderon v. Presidio Valley Farmers Ass'n, 765 F.2d 1334 (5th Cir. 1985), *cert. denied* — U.S. —, 106 S. Ct. 1245 (1986) 3, 5, 6, 8

Sandstrom v. Montana, 442 U.S. 510 (1979) 9

Soliz v. Plunkett, 615 F.2d 272 (5th Cir. 1980) 5

Stewart v. James, 519 F. Supp. 315 (E.D.N.Y. 1981) 7

Washington v. Miller, 721 F.2d 797 (11th Cir. 1983) 7, 9

STATUTES

Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* 2

Farm Labor Contractor Registration Act, 7 U.S.C. § 2041, *et seq.* 4

Migrant and Seasonal Agricultural Worker Protection Act,

29 U.S.C. § 1801 *et seq.* ..... *passim*

29 U.S.C. § 1854(c)(1) 3, 5

COURT RULE

Supreme Court Rule 17 4

MISCELLANEOUS

H.R. Rep. 97-885, 97th Cong. *reprinted in* 1982 U.S. Code Cong. & Ad. News 5

S. Report No. 93-1295, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad. News 6441 5

128 Cong. Record 10456 (1982) 6

In The

Supreme Court of the United States

DARLENE and RICHARD MATTNER, d/b/a MATTNER FARMS,

Petitioners,

v.

JESUS BUENO, *et al.*,

Respondents.

No. 87-1111

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Respondents, 32 migrant farmworkers awarded damages for petitioners' violations of the Migrant and Seasonal Agricultural Worker Protection Act (hereinafter "MSAWPA" or the "Act"), respectfully request that this Court deny the petition for certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit, *Bueno v. Mattner*, 829 F.2d 1380 (6th Cir. 1987) affirming *Bueno v. Mattner*, 633 F. Supp. 1446 (W.D. Mich. 1986).

STATEMENT OF THE CASE

Petitioners' recitation is essentially correct.[1] For completeness, however, the following additional details are warranted.

Respondents are 32 of 37 original plaintiffs. The other five are unaffected as they were not awarded damages.

[1]One exception is that the case was commenced in February 1984 rather than 1983. Petition at 7.

The district court ordered injunctive relief and awarded damages under both the Fair Labor Standards Act (hereinafter "FLSA"), 29 U.S.C. § 201 *et seq.* and MSAWPA, 29 U.S.C. § 1801 *et seq.* The total award for both was $10,823.56.

The district court found the petitioners responsible for the following MSAWPA violations (many of which were admitted by petitioners):

1. Failure to disclose place of employment.
2. Failure to disclose wage rate to be paid.
3. Failure to disclose crops and kinds of activities in which worker would be employed.
4. Failure to disclose the period of employment.
5. Failure to provide an itemized written pay statement (containing the basis on which wages are paid; number of piecework units; number of hours worked; total pay period earnings; and net pay); these are to be preserved for three years. These violations are very similar to petitioners' violations of FLSA.
6. Failure to provide information regarding housing provided.

In assessing damages for the MSAWPA violations, the court exercised its discretion, applied the criteria found in *Belis v. W.H. McLeod & Sons Packing Co.*, 765 F.2d 1317, 1332 (5th Cir. 1985), and awarded only $75.00 per violation although the statute provides for up to $500.00.

Following directly relevant caselaw, the Sixth Circuit rejected the concept that a lack of awareness of the statute must preclude awarding damages for a violation. *Bueno*, 829 F.2d at 1386. The Sixth Circuit concluded that the Fifth Circuit was correct to reject just such a claim in

Salazar-Calderon v. Presidio Valley Farmers Ass'n, 765 F.2d 1334, 1345 (5th Cir. 1985), *cert. denied*, — U.S. —, 106 S. Ct. 1245 (1986) which relied, *inter alia*, upon *Castillo v. Givens*, 704 F.2d 181, 198 (5th Cir. 1983), *cert. denied*, 464 U.S. 850 (1984).[2]

A number of issues (family business exemption, meaning of "recruitment", etc.) were decided by one or both of the lower courts. The only question for which certiorari is sought is whether a defendant must be aware of the statute in order to be held to pay monetary damages.

REASONS WHY THE WRIT SHOULD BE DENIED

Summary of Argument

Petitioners argue that in order to be held liable for damages to an injured migrant farmworker under MSAWPA § 504(c)(1), 29 U.S.C. § 1854(c)(1), a defendant must know of the Act. Not only is this inconsistent with the remedial purposes and broad construction of the statute and its predecessor but it would be a departure from established law which focuses upon *conduct* not knowledge of illegality. It would also place a premium on ignorance.

Petitioners' position is contrary to all precedents interpreting MSAWPA and the Farm Labor Contractor Registration Act (hereinafter "FLCRA"). In urging this

[2]While not *per se* precedential, it is noteworthy that in both *Salazar-Calderon* and *Castillo*, petitioners requested that this Court review the question of "intentional" violations. *See* Petitions and Briefs in Opposition in Supreme Court No.'s 85-849 and 83-135.

Court to exempt agricultural employers who remain ignorant of their obligations from the private enforcement provisions of the Act, petitioners ask the Court to create an expansive exception permitting evasion of the responsibilities placed upon such employers by Congress in an effort to ameliorate the widespread, persistent and well-documented abuses of impoverished migrant farmworkers.

For there to be a direct and real conflict, there would have to be a case which holds that knowledge of FLCRA or MSAWPA is necessary to award damages. There simply is no such case; nor is there conflict with any decision of this Court or common law.

Considerations For Granting Certiorari Under Rule 17.1 Have Not Been Presented

Petitioners assert (1) that this case conflicts with decisions of this Court and (2) that there is a conflict among circuits. Petition at 14 and 23. These allegedly implicate Supreme Court Rule 17.1(a) regarding conflict between federal courts of appeal and 17.1(c) on decisions which conflict with applicable decisions of this Court. Only by exercise of semantic wizardry can petitioners create these "conflicts". This is not a case of inconsistent decision with this Court or conflict among the circuits: the various decisions are entirely consistent.

MSAWPA—History And Purpose, Particularly Regarding Private Enforcement As A Means To Remedy Abuses, And Broad Construction Thereof

MSAWPA is the successor to the FLCRA. The FLCRA, 7 U.S.C. § 2041 *et seq.*, of 1963 was the first extensive effort by Congress to deal with the documented

abuses and exploitation of migrant farmworkers. The statute was found wanting and was amended in 1974. *See* S. Rep. No. 93-1295, 93rd Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad. News 6441. One glaring defect was lack of effective enforcement. *Id.* at 6443 and 6445.[3] Thus, a private right of action was created. *Id.* at 6450.

By the early 1980's, the statute was still found wanting. MSAWPA was a consequence of "dissatisfaction with . . . [t]he failure of the current law to achieve its goal of fairness and equity for migrant workers . . .". H.R. Rep. No. 97-885, 97th Cong., *reprinted in* 1982 U.S. Code Cong. & Ad. News 4547. Congress was aware of the existing caselaw. *Id.* at 4548.

Congress said of "intentional" in § 504(c), 29 U.S.C. § 1854(c)(1), that it is "a standard identical to that utilized in FLCRA". 1982 U.S. Code Cong. & Ad. News at 4567.

The Act is remedial and to be given broad construction to effectuate its purposes. *See, e.g., Soliz v. Plunkett*, 615 F.2d 272, 275-76 (5th Cir. 1980); *Marshall v. Coastal Growers Ass'n*, 598 F.2d 521, 525 (9th Cir. 1979); *Salazar-Calderon v. Presidio Valley Farmers Ass'n, supra; Almendarez v. Barrett-Fisher Co.*, 762 F.2d 1275, 1281 (5th Cir. 1985); *Rivera v. Adams Packing Ass'n. Inc.*, 707 F.2d 1278, 1281 (11th Cir. 1983).

In *Beliz v. W.M. McLeod & Sons Packing Co., supra*, at 1332, the court wrote:

---

[3]*Cf., e.g., Mountain Brook Orchards v. Marshall*, 640 F.2d 454 (3d Cir. 1981).

> The legislative history of the Act and the decisions interpreting it make clear that the purpose of this civil remedy is not restricted to compensation of individual plaintiffs. It is designed also to promote enforcement of the Act and thereby deter and correct the exploitive practices that have historically plagued the migrant farm labor market. (footnote omitted).[4]

There Is No Conflict Among The Circuits With Regard To The Only Issue Before The Court Nor Are There Conflicts With Decisions Of This Court And Petitioners' Argument Is Without Merit

To postulate any conflict(s), one must assume that "liability for natural consequences of his or her actions" is somehow substantively different from a "conscious and deliberate act" leading to liability. This semantic distinction is not founded in law but created by petitioners of whole cloth to assert a conflict which no court to date has recognized. *See Salazar-Calderon, supra; Castillo, supra; Alvarez v. Joan of Arc, Inc.*, 658 F.2d 1217, 1224 (7th Cir. 1981); *De La Fuente v. Stokely-Van Camp*, 713 F.2d 225 (7th Cir. 1983); *Alvarez v. Longboy*, 697 F.2d 1333 (9th

---

[4]See Comments of Congressman Ford at 128 Cong. Record 10456 (December 20, 1982): "[MSAWPA] corrects the key weakness of the FLCRA, which held only the farm labor contractor responsible for such abuses and shielded the employer unless he fell within the narrow definition of farm labor contractor under that Act. . . . Like the FLCRA, the AWPA provides for a private right of action and holds out the prospect of large damage awards against agricultural employers who mistreat their workers. This, I am sure, will prove to be the most important deterrent against the continued abuse of migrant and seasonal farmworkers . . .".

Cir. 1981); *Rivera v. Adams Packing Ass'n Inc., supra; Washington v. Miller,* 721 F.2d 797, 803 (11th Cir. 1983); and, also, *Aranda v. Pena,* 413 F. Supp. 849 (S.D. Fla. 1976); *DeLeon v. Ramirez,* 465 F. Supp. 698 (S.D.N.Y. 1979); *Stewart v. James,* 519 F. Supp. 315 (E.D.N.Y. 1981).

Three points may be drawn from the caselaw: (1) no specific intent to violate the statute is required; (2) there must be conscious or deliberate acts; and (3) a person will be held liable for the natural consequences of his or her acts. The last two are not mutually exclusive; such exclusity is a necessary precursor to accepting petitioners' argument. This threefold approach is effectively the common civil standard of intent as applied to MSAWPA.

The inherent fallacy in petitioners' argument is the focus on *knowledge of the statute* rather than the individual's *conduct.* This is the ultimate illogic of petitioners' position.

In this case, petitioners recruited, hired, housed and paid wages to migrant farmworkers. However, they failed to keep accurate or complete time or pay records and failed to give adequate disclosures. These actions did not have to be undertaken with specific intent to violate the statute. They were conscious and deliberate. The consequences, *inter alia,* were confusion of the farmworkers and failure of petitioners to pay minimum wages or properly record or explain the payments made. These are examples of the abuses or exploitation that Congress has sought to eliminate. The commissions and omissions (*see* Petition at 19) of petitioners violated the Act. They were liable for damages because of what they did and did not do irrespective of knowledge of the Act. It was petitioners' conduct which

created liability. *Cf., e.g., Reynolds v. United States,* 98 U.S. 145, 167 (1879) and *Ellis v. United States,* 206 U.S. 246, 257 (1907).[5]

While the decision of this exact question was perhaps not necessary to the particular facts in that case, the decision in *Salazar-Calderon, supra,* cannot be dismissed so handily as petitioners imply for it carefully scrutinized the major cases as well as legislative history and purpose. The Fifth Circuit concluded that to accept the same argument made in the present case by petitioners would be to change the standard of intent to specific intent. "The focus under the standard . . . is on the deliberateness of the conduct, not the defendant's knowledge of the Act". *Id.* at 1345, n.5, quoted with approval in *Bueno,* 829 F.2d at 1386.[6] Moreover, this standard was determined to further the Act's remedial purposes. So to say that the Sixth Circuit's decision, relying upon *Salazar-Calderon, supra, Castillo, supra,* and *De La Fuente, supra,*

---

[5]*Ellis* was a criminal case on the 8 hour day. Justice Holmes wrote: "The argument against the [jury] instruction is that the word intentionally in the statute requires specific knowledge of the law; or at least that, to be convicted, Ellis must not have supposed, even mistakenly, that there was an emergency extraordinary enough to justify his conduct. The latter proposition is only the former a little disguised. Both are without foundation. If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent". 206 U.S. at 257.

[6]The Sixth Circuit there also approvingly quotes from *De La Fuente v. Stokely-Van Camp, supra,* at 238: " . . . there are no facts in the record to indicate that this failure was not conscious or deliberate (even if [the defendant was] unaware it was violating the law)".

was "frolic and detour" and "without cogent analysis" (Petition at 20 and 25) is incorrect. The assertion of conflict between the Seventh and Eleventh Circuits, for instance, is disingenuous. *See Washington v. Miller, supra,* at 803, relying upon *Alvarez v. Joan of Arc, Inc., supra,* from the Seventh Circuit; likewise, the Fifth Circuit in *Castillo, supra,* at 198, utilized both *Joan of Arc, Inc.* and *DeLeon v. Ramirez, supra,* (from the Southern District of New York). The Sixth Circuit's decision was entirely consistent with decisions of other circuits and even the district courts.

Petitioners' assertion of conflict between the Sixth Circuit's decision and precedents of this Court is also disingenuous. The cases cited are inapposite.[7] They do not support the statement that the Court has defined intentional "in construing statutes of *different but similar* social character and legislative purpose to FLCRA and MSAWPA" (emphasis added) as the definition urged by petitioners. Petition at 18.

---

[7]Petitioners' reading of Justice Holmes' dissent in *Abrams v. United States,* 250 U.S. 616, 626 (1919) is strained; moreover, *Abrams* was a criminal case (espionage) in the unique context of free speech. *Sandstrom v. Montana,* 442 U.S. 510 (1979) involved a homicide and due process. *Personnel Administrator of Mass. v. Feeney,* 442 U.S. 256 (1979) relates to *legislative intent* vis a vis consequences in passing a veterans preference statute. *Radio Officers Union v. Labor Board,* 347 U.S. 17, 45 (1953) involved unfair labor practices and refers to "natural consequences". *Cramer v. United States,* 325 U.S. 1 (1944) was criminal (treason). *NLRB v. Erie Resistor Corp.,* 373 U.S. 221 (1963) is an unfair labor case and is specific to that context, at 227: "cases in this Court dealing with unfair labor practices have recognized the relevance and importance of showing the employer's intent or motive to discriminate or interfere with union rights". There are no equivalent cases in this Court in the present context.

Petitioners have engaged in hyperbole when they say that litigants and lower courts "urgently need" the Court's assistance as "the need for guidance . . . is acute". Petition at 28-9. Further, it is a misstatement that leaving *Bueno v. Matter,* 829 F.2d 1380 untouched "will effectively *re*structure and *re*draft the statutory basis for a private cause of action under MSAWPA and similar legislation, and . . . will *re*define the common law measure of intentional conduct . . .". (Emphases added). Petition at 21-2. This is precisely backwards. All previous cases are consistent. It is petitioners who continue to seek *re*definition. The decision below is sound as it is founded upon the statute, its remedial purposes, all prior caselaw and proper application of common law.

———o———

CONCLUSION

No conflict exists among the circuits or with decisions of this Court or any other. Petitioners' argument is a departure from established law: that a person is liable for the consequences of his or her conduct. Petitioners would condition that liability on awareness of a statutory proscription. Not only would this deviate from established law but it would be inconsistent with the remedial purposes of the statute and be contrary to Congress' efforts to strengthen enforcement by amending FLCRA and then passing MSAWPA.

The Petition for the Writ of Certiorari should be denied.

DATED: January 20, 1988

Respectfully submitted,

MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.
Attorneys for Respondents
By: GARY N. GERSHON
49 Monroe Center, N.W., 3-A
Grand Rapids, MI 49503-2933
(616) 454-5055